



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/172364

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on April 19, 2016, at Eau Claire, Wisconsin.

The issue for determination is what benefits the petitioner is entitled to under a BadgerCare Plus extension.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner received BadgerCare Plus. Until those benefits ended on January 1, 2016, because her income exceeded the program's limit.

3. The county agency determined that the petitioner was eligible for a BadgerCare Plus extension, beginning on January 1, 2016. It notified the state department of this, but the department did not take the action necessary to put the extension into effect.
4. The petitioner incurred medical bills in January 2016 when she was ineligible for BadgerCare Plus.
5. The petitioner and her husband each obtained private insurance and are covered from February through May 2016. Their combined premiums were over \$400 per month.
6. If the department had acted on the BadgerCare Plus extension as the county agency requested, the petitioner would have owed premiums of \$146 per month from January through March 2016 and \$126 per month in subsequent months.

DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 50.1.; *BadgerCare Plus Handbook*, § 50.1. But when a household's income increases from below the federal poverty level to above it, those already receiving benefits remain eligible for another year under a BadgerCare extension, regardless of their income. *BadgerCare Plus Eligibility Handbook*, § 18.1. When the petitioner's income exceeded the poverty level, the department notified her that her benefits would end as of January 1, 2016, even though the county agency indicates that she was eligible for an extension. The worker at the hearing testified that the county agency tried to get the state to put the extension in place, but the state never acted on the request; the worker indicated that only the state can provide an extension.

Because the state did not allow the petitioner to receive an extension the county agency says she was entitled to, she suffered financial consequences. She could not obtain the private insurance in time to be covered in January 2016. That month she was hospitalized and is liable for the bill. When she did get private insurance for herself and her husband, their combined premiums exceeded \$400 per month. If she had been allowed to receive an extension, her premium would have been \$146 per month from January through March 2016 and \$126 per month after that.

The specific requirements a person must meet to receive an extension are found in *BadgerCare Plus Handbook*, § 18.2.2. They are:

1. The income increase which caused the countable income for his or her BadgerCare Plus AG [assistance group] to exceed 100 percent FPL must be due solely to one of the following:
 - a. Increased earnings (of anyone in the same AG)
 - b. Increased earnings along with other income (changed or unchanged)
2. He or she must be a BadgerCare Plus member with income at or below 100 percent FPL at the time the income increased to over 100 percent FPL.
3. The parent, caretaker, or pregnant woman must have been enrolled in BadgerCare Plus with income that was at or below 100 percent FPL for at least three of the six months immediately preceding the month in which the income went above 100 percent FPL.
4. He or she must otherwise meet the BadgerCare Plus eligibility criteria for persons with income below 100 percent FPL.
5. He or she verified his or her income unless he or she is exempt from paying a premium because he or she and any co-parent or spouse in the AG are disabled, a tribal member, or pregnant. (This policy applies to all adults in the AG. Unless they are all exempt from paying a premium, income must be verified.)

The policy does not explicitly state how long the extension lasts, but it refers to "12 months" in at least one of the examples. See, e.g., *BadgerCare Plus Handbook*, § 18.1.2. In addition, the concept of an

extension is addressed in the BadgerCare Plus statute, although it pertains only to situations where a person eligible under a different medical assistance program in effect before BadgerCare Plus began would be ineligible for BadgerCare Plus solely because of income. *See* Wis. Stat. § 49.471(3)(b)1. That section allowed recipients to “continue receiving for 12 consecutive months the medical assistance he or she was receiving before the implementation of BadgerCare Plus.” The department also stated that the extensions last for 12 months in *DHS Operations Memo*, 14-3.

No one disputes that the petitioner met all of the requirements to receive an extension. Based upon that, I will order the agency to find her eligible retroactive to January 1, 2016.

Those receiving BadgerCare Plus extension benefits must pay a premium if their income exceeds 133% of the federal poverty level. *BadgerCare Plus Handbook*, § 18.1.1. The question is whether the petitioner must pay retroactive premiums for her eligibility to begin on January 1, 2016. She doesn’t. BadgerCare Plus policy instructs workers: “You must give a 10-day notice to the member when the group is required to pay a premium for the first time or is required to pay a higher premium.” The premium doesn’t go into effect until the next month if eligibility is confirmed before adverse action, which is generally 13 days before the end of the month. If eligibility is confirmed after adverse action, the premium or increase is not effective until the second following months *BadgerCare Plus Handbook*, § 19.10.2. The Department never gave the petitioner a 10-day notice of her premium because it never confirmed her eligibility for an extension. Because the department cannot confirm the petitioner’s eligibility until it enforces this decision, as a practical matter, it cannot assess a premium against her until June 2016. This was a concern of hers because she has already paid for private insurance coverage through May 2016.

I am aware that this decision does not put the petitioner in the position she would have been in if the department had granted her an extension immediately. This is because the amount she has paid for private health insurance is more than \$1,000 higher than her BadgerCare Plus premiums would have been. Because administrative law judges lack the equitable powers needed to create a remedy that corrects a past injustice, I cannot break her extension into two separate parts, with January 2016 in one and June 2016 through April 2017 in the other. Instead, the extension must run consecutively from January through December 2016. Nor do may I order the department to pay the difference between private premiums and BadgerCare Plus premiums.

CONCLUSIONS OF LAW

1. The petitioner is entitled to a 12-month BadgerCare Plus extension beginning on January 1, 2016.
2. The petitioner’s eligibility shall be considered confirmed when the department complies with this decision’s order.
3. The department cannot assess a BadgerCare Plus premium against the petitioner until it has given her a 10-day notice of its intent to do so. She is not responsible for paying any premium assessed until the month after the department confirms her eligibility, if her eligibility is confirmed before adverse action, or the second month after the department confirms her eligibility, if her eligibility is confirmed after adverse action.

THEREFORE, it is

ORDERED

That this matter is remanded to county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner’s BadgerCare Plus eligibility retroactive to January 1, 2016, and continue her eligibility for 12 months, if she continues to meet the requirements of a BadgerCare Plus extension. Consistent with the discussion and findings of fact of this decision, the agency shall not assess any premium against the petitioner before June 1, 2016, and it shall give her at least a 10-day notice of the amount of the premium before doing so.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of April, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 20, 2016.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability